

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

GIFT TAX REFERENCE No 20 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF GIFT. TAX

Versus

YOGIN R. MAJMUDAR

Appearance:

1. GIFT TAX REFERENCE No. 20 of 1987
MR BB NAIK with MR MANISH R BHATT for Petitioner No. 1
SERVED BY RPAD - (N) for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 25/09/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this reference at the instance of the revenue,

the following questions have been referred for the opinion of this Court in respect of assessment year 1981-82 :-

"(1) Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that on the relinquishment of the right to receive 50% share from the firm by assessee, no gift-tax liability was attracted ?

(2) Whether, on the facts and in the circumstances of the case, there was a gift under provision of Gift-tax Act, 1958 when the assessee Shri Yogin R. Majmudar relinquished his right to receive 50% share from the firm of M/s. Bakula Industries ?"

2. We have heard Mr BB Naik, learned counsel for the revenue. Though served, none appears for the respondent-assessee.

3. Assessee-Mr Yogin R Majmudar was a partner in a partnership firm "M/s Bakula Industries" to the extent of 50% share. The other partner was Mrs Aruna R. Majmudar. By deed dated 16.9.1980, the assessee, in his individual capacity, retired from the said firm with effect from 1.4.1980 and by the same deed, remaining partner Mrs Aruna R. Majmudar agreed to have the assessee as a partner in the said firm in his capacity as karta of an HUF. On these facts, the Gift-tax Officer took the view that the assessee had relinquished his share without taking any pecuniary consideration from the other partner and had thus gifted his share of future profit and goodwill in the firm to Mrs Aruna R. Majmudar. The Gift Tax Officer, therefore, worked out the share of the assessee in the goodwill of the firm at Rs.1,81,500/- and brought the same to tax under the Gift Tax Act, 1958.

The Commissioner of Gift-tax (Appeals) allowed the assessee's appeal. Hence, the revenue went in appeal before the Tribunal. The Tribunal held that since there was a specific provision in the partnership deed to the effect that the assessee partner had no share in the goodwill of the firm, there was no gift by the assessee at the time of his retirement from the firm. Hence, this reference at the instance of the revenue.

4. The Tribunal has rightly noted that since the assessee in his individual capacity retired from the firm

and with effect from the same date, the assessee in his capacity as the karta of the HUF was admitted as a partner, it made no difference to the other partner - Mrs Aruna R. Majmudar whether the assessee was a partner in his individual capacity or in his capacity as karta of an HUF. The Tribunal further noted that so far as the consideration is concerned, it may even be true that there was capital contribution by the HUF, but there was no payment by the HUF to the assessee individual. The Tribunal noted the fact that the partnership deed did contain a clause that a partner had a share in the goodwill during subsistence of the firm, but the partner had no share in the goodwill at the time of retirement.

5. Apart from the aforesaid clause in the partnership deed, in view of the principle laid down by the Apex Court in Commissioner of Gift-tax vs. TM Louiz, (2000) 245 ITR 831 laying down that when a partner retires from the partnership, the partnership continues and the assets and the goodwill of the firm continue to remain the assets and the goodwill of the firm and that the definition of 'gift' makes it clear that there has to be a transfer by one person to another of movable or immovable property, in our view the transaction in question had no element of gift-tax and, therefore, the Tribunal was right in holding that in the facts and circumstances of the case, on the relinquishment of the right by the assessee to receive 50% share from the firm, no gift-tax liability was attracted.

6. We accordingly answer question No. 1 in the affirmative i.e. in favour of the assessee and against the revenue.

7. For the same reasons, our answer to question No. 2 is in the negative i.e. in favour of the assessee and against the revenue.

8. The reference accordingly stands disposed of with no order as to costs.

(M.S. Shah, J.)

(D.A. Mehta, J.)

sundar/-